

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Howard Boddie, Jr.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:15-cv-06
	:	
Scott J. Van Steyn,	:	JUDGE GEORGE C. SMITH
	:	Magistrate Judge Kemp
Defendant.	:	

REPORT AND RECOMMENDATION

Plaintiff, Howard Boddie, Jr., a state prisoner, submitted his complaint in this case on January 2, 2015. His complaint was accompanied by a motion for leave to proceed *in forma pauperis*. However, Mr. Boddie has had three or more cases or appeals dismissed in the past as frivolous or for failure to state a claim on which relief can be granted. Under that portion of the Prison Litigation Reform Act codified at 28 U.S.C. §1915(g), the so-called "three strikes" rule, a prisoner may not bring a suit *in forma pauperis* if that prisoner "has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the ground that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." Thus, Mr. Boddie was not entitled to proceed *in forma pauperis* and to pay either the District Court or appellate filing fee in installments unless he demonstrated that he met the "imminent danger" requirement of §1915(g). Otherwise, he was required to pay the entire filing fee for filing a case or filing an appeal.

In a prior Report and Recommendation (Doc. 2), the Court found that Mr. Boddie was required to pay the full filing fee for

this case. He objected, but that recommendation was upheld by Judge Smith (Doc. 4) and his motion for reconsideration was overruled (Doc. 6). Mr. Boddie then filed a motion for leave to appeal *in forma pauperis* and a notice of appeal. In a second Report and Recommendation (Doc. 10), the Court found that the notice of appeal was premature and without effect and that, as a prisoner subject to the "three strikes" rule, Mr. Boddie was not entitled to proceed on appeal without paying the filing fee. That recommendation also was upheld (Doc. 12). By order dated November 25, 2015, this case was dismissed for Mr. Boddie's failure to pay the filing fee (Doc. 13).

Following the dismissal, Mr. Boddie has filed another notice of appeal and motion for leave to appeal *in forma pauperis*. It is recommended that the Court deny the motion (Doc. 15) because, as a prisoner subject to the "three strikes" rule, Mr. Boddie is not entitled to proceed on appeal without paying the filing fee. It is further recommended that he be assessed the appellate filing fee and be given thirty days within which to pay it.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object

to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge